

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BURBANK HOLDINGS, LLC,

Plaintiff,

vs.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

2:08-cv-01558-KJD-RJJ

REPORT & RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE

Petitioner's Motion to Quash Internal
Revenue Service Third Party Summons (#1)

This matter came before the undersigned Magistrate Judge on Petitioner Burbank Holdings, LLC's Motion to Quash Internal Revenue Service Third Party Summons (#1).

Respondent Internal Revenue Service (IRS) is conducting an investigation relating to the collection of the federal tax liabilities assessed against Petitioner for the years 1998 to 2003. To aid the collection of these federal tax liabilities, Robert Soto, IRS Revenue Officer, issued a summons to Community Bank on October 16, 2008. Petitioner moved to quash this summons on November 12, 2008. (#1).

It is a longstanding rule within the Ninth Circuit that "[c]orporations and other unincorporated associations must appear in court through an attorney." *D-Beam Ltd. Partnership v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004); *see also California Native Plant Soc. v. EPA*, 2008 WL 4911162 (N.D. Cal) (holding that a limited liability company may only appear in federal court through a licensed attorney); *see also Acacia Corporate Management, LLC v. United States*, 2008 WL 191029 *2 (E.D. Cal.); *US Phillips Corp. v. Synergy Dynamic Intern, LLC* 2007

1 WL 2914804 (D. Nev.). The petition in this instance was filed by William Waller on behalf of
2 Burbank Holdings, LLC. Waller signed the petition as the manager of Burbank Holdings, LLC.
3 Waller is not an attorney. Because Burbank Holdings is a limited liability company it must appear
4 through a licensed attorney.

5 **RECOMMENDATION**

6 Based on the foregoing and good cause appearing therefore,

7 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that Petitioner's
8 Motion to Quash Internal Revenue Service Third Party Summons (#1) be **DENIED WITHOUT**
9 **PREJUDICE.**

10 **NOTICE**

11 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must**
12 **be in writing and filed with the Clerk of the Court on or before September 21, 2009.** The
13 Supreme Court has held that the courts of appeal may determine that an appeal has been waived due
14 to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).
15 This circuit has also held that (1) failure to file objections within the specified time and (2) failure
16 to properly address and brief the objectionable issues waives the right to appeal the District Court's
17 order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
18 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

19 DATED this 9th day of September, 2009.

20
21
22 
23 ROBERT J. JOHNSTON
24 United States Magistrate Judge
25
26
27
28